

**REMARKS**

Reconsideration of this application is respectfully requested.

**I. Status of the Claims**

Claims 1–3, 5, 6, 8, 9 and 11 are currently pending in this application. As claims 1 and 2 were previously withdrawn from consideration, and claims 4, 7 and 10 previously canceled without prejudice or disclaimer, claims 3, 5, 6, 8, 9 and 11 are currently at issue. Claim 3 has been amended to more particularly define the particles of the granulated flavor. Support for this amendment can be found at p. 3, ll. 6–15, p. 4, ll. 15–19 and p. 11, ll. 23–27 of the application as filed. Claims 5, 6, 8, 9 and 11 have been amended to make the preambles of the claims consistent with claim 3. No new matter has been added by this amendment.

**II. Written Description Rejection**

Claims 3, 5, 6, 8, 9 and 11 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claim 3 has been amended to more particularly describe the particles of the granulated flavor. Specifically, the granulated flavor contains particles having a particle size of 105  $\mu\text{m}$ –2 mm, and the proportion of the particles having a particle size of 105  $\mu\text{m}$ –2 mm is 85% or more by weight (*i.e.*, at least 85% of the granulated particles by weight have a particle size of 105  $\mu\text{m}$ –2 mm). Support for this amendment can be found at least at p. 4, ll. 15–19 and p. 11, ll. 23–27 of the application, as filed. As there is explicit written support for amended claim 3, it is believed that the written description rejection should be withdrawn. Accordingly, Applicant requests reconsideration of the claims.

### **III. Obviousness Rejection**

Claims 3, 5, 6, 8, 9, and 11 are rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent Publication No. 2001/0036503 to Benczedi and Bouquerand (hereinafter, Benczedi), in view of the Examiner's statement of ordinary skill in the art. The Examiner argues that Benczedi discloses a granulated flavor for use in foods and beverages containing a carrier, a 6% moisture content, particles with a diameter of 0.7 mm, and that the length of the particles is adjustable. The Examiner further contends that "as a result of having the same composition and particle size as instantly claimed, the product formed by Benczedi will intrinsically have the hardness in the claimed range" (*see* Office Action, p. 4). Applicant respectfully traverses this rejection and requests reconsideration, based on the following.

#### **The product of claim 3 is materially different from Benczedi's product**

As a first matter, and contrary to the Examiner's assertion, Benczedi does not disclose, let alone suggest, the presently claimed composition (*see* Office Action, p. 4). The present invention, as defined by the claims, comprises particles derived from partially melted plated matter. This is a plated matter that is not totally melted. As discussed in Applicant's previous response of December 30, 2008, the granulated flavor of the present invention is obtained by cooling the partially melted plated matter and grinding and granulating the cooled plated matter, so the granulated flavor of the present invention has (i) a melted-cooled state in part and (ii) a non-melted hard state in part.

In contrast, Benczedi discloses that the granulated flavor is obtained by heating the mixture to a temperature between 90 °C and 130 °C to form a molten mass. Benczedi discloses that "it has to be above the glass transition temperature of the carbohydrate matrix in order to keep the mixture in the form of a molten mass" (Benczedi, p. 3, paragraph [0030]). It is clear that in order to form a molten mass of the mixture in Benczedi, the mixture must be totally melted. Thus, a "partially melted plated matter" in Benczedi's final product cannot be obtained by the methods in Benczedi. Accordingly, the granulated flavor of Benczedi cannot have both a melted-cooled state in part and a non-melted hard state in part.

Accordingly, Benczedi's product and the present invention, as defined by the claims, are materially different. The Examiner contends that Benczedi's compounds will intrinsically have a hardness in the claimed range. However, it does not follow that a compound formed from partially melted material (the presently claimed invention) and one that is fully melted (the prior art) will have the same properties.

Further, Benczedi does not provide any teaching or suggestion that a product other than a molten mass should be used. In fact, Benczedi teaches that "the invention provides an optimized process for shaping a delivery system, and prevents several disadvantages encountered with the systems described in the prior art" (*see* Benczedi, paragraph [0027]). Accordingly, one of ordinary skill in the art, upon reading the teachings of Benczedi, would have always used a molten mass, and not a partially melted material. To do otherwise would be in direct contrast with the teachings of Benczedi.

Product-by-Process claims (claims 6 and 9)

Applicant reiterates that Benczedi does not teach the product of currently amended claim 3. Therefore, the product-by-process claims presented herein define a novel product, as argued above. Accordingly, Applicant requests reconsideration of claims 6 and 9.

Claims 5, 8 and 11

As Benczedi does not teach or suggest the product of claim 3, it follows that Benczedi does not teach or suggest a food or beverage containing the product of claim 3. Accordingly, Applicant requests reconsideration of claims 5, 8 and 11.

Based on the arguments and amendments presented herein, Applicant respectfully requests withdrawal of the obviousness rejection and reconsideration of claims 3, 5, 6, 8, 9 and 11.

**CONCLUSION**

Based on the above amendments and arguments, the subsisting claims are believed to be in condition for allowance, and such action is earnestly solicited. If there are remaining issues that the Examiner believes could be addressed by conducting an interview or entering an Examiner's Amendment, the Examiner is cordially invited to contact the undersigned agent to discuss such issues.

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Respectfully submitted,

By 

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